

# Community fact sheet: Systemic Racism

## What is systemic racism?

Systemic racism is when laws, policies and practices across agencies work together to produce a discriminatory outcome for racial or cultural groups. While the laws, policies and practices may appear to be neutral, they result in uneven or unfair outcomes.

Systemic racism is different to individual or interpersonal racism, which takes place when individuals hold racist views and treat people differently based on those views, for example, hate speech or racial abuse. Laws, policies and practices can contribute to systemic racism, even if this is not acknowledged or recognised by the authorities that develop and implement them.

## How does systemic racism affect Aboriginal communities?

Systemic racism impacts the lives of Aboriginal people and communities in Victoria on a daily basis. It affects VALS clients across all of the areas where we provide legal and community justice services, including criminal justice, youth justice, child protection, family law, tenancy, employment, access to health services, coronial inquests and police complaints.

For example, systemic racism results in over-representation of Aboriginal people at all stages of the criminal justice and youth justice systems, as well as disproportionate rates of child removal and placement of Aboriginal children in out-of-home-care.

The impact of systemic racism on Aboriginal communities is a direct product of this country's violent and racist history. The legal system is built on a foundation of violence and dispossession, denial of sovereignty and humanity, with the colonial project continuing through policies of protection and assimilation.

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### How can systemic racism in the justice system be addressed?

Addressing systemic racism requires systemic reform across laws, polices, practices and institutions which reinforce and perpetuate this form of racism. It also requires robust mechanisms to hold public authorities to account when they engage in any form of racism. Aboriginal communities know what the solutions are and have been calling for change for decades.

#### 1. Reform laws and policies that have a discriminatory impact for Aboriginal people

One of the key ways to address systemic racism is to reform laws, policies and practices that disproportionality impact Aboriginal people in a discriminatory manner.

For example, the punitive bail system in Victoria has a disproportionate impact on Aboriginal people because of the high threshold for accessing bail. In June 2020, 44% of Aboriginal people in prison in Victoria were on remand and had not been convicted of an offence. Amongst the non-Aboriginal prison population, only 35% of people were on remand. Accessing stable accommodation is a key factor in being granted bail, yet Aboriginal people experience higher rates of housing instability than non-Aboriginal people, and there is a significant shortage of culturally safe residential bail support and accommodation. This often means that an Aboriginal people are not able to access bail and is more likely to be remanded in custody whilst they wait for their criminal charges to be heard.

Similarly, the low age of criminal responsibility in Victoria and across Australia disproportionality affects Aboriginal children and young people, who have contact with the youth justice system at a much younger age than non-Aboriginal children. They are also less likely to receive a caution and more likely to be charged with an offence. Raising the age of criminal responsibility from 10 to at least 14 years is a critical way of addressing systemic racism and reducing over-representation of Aboriginal children within the youth justice system.

#### 2. Mandate accountability and monitoring mechanisms to investigate systemic racism

Systems, mechanisms and bodies of accountability and oversight should be explicitly

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mandated to examine and investigate systemic racism. This includes all complaints mechanisms, as well as detention monitoring bodies and coronial processes.

For example, in accordance with international law, the Australian Government and all State and Territory Governments are required to establish a mechanism to carry out independent monitoring of all places where people are or may be detained. This includes police custody, prisons, forensic mental health hospitals, involuntary mental health facilities, secure welfare and residential care facilities. The aim of the monitoring is to prevent ill-treatment and torture including for example, solitary confinement. Independent monitoring of places of detention is also a critical way to prevent Aboriginal deaths in custody. To achieve this goal, all bodies that monitor places of detention must be explicitly mandated to examine and make recommendations on how to address systemic racism within detention settings.

When relevant, systemic racism should also be considered during coronial inquests, which seek to establish the cause and circumstances of certain deaths, including when someone dies in custody or in connection with a police operation. In the coronial inquest into the passing of Tanya Day, the Coroner investigated whether systemic racism played a role in the death of Ms Day. The Coroner found that the decision of the train conductor to call the police, rather than pursue other options, was affected by unconscious bias and Ms Day's Aboriginality.

### 3. Establish an Aboriginal Social Justice Commissioner

Despite numerous inquiries and recommendations to address systemic racism and its impacts for Aboriginal people, there is a lack of accountability and the vast majority of recommendations have not been implemented. For example, it is over thirty years since the RCIADIC, yet many of these recommendations have not been implemented.

VALS and the Aboriginal Justice Caucus have repeatedly called for the establishment of an Aboriginal and Torres Strait Islander Social Justice Commissioner, to oversee Aboriginal justice outcomes in Victoria. In particular, the Commissioner would have oversight of the implementation of RCIADIC recommendations in Victoria, as well as recommendations arising from coronial inquests into the deaths of Aboriginal people.

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### 4. Develop a robust Anti-Racism Strategy that leads to concrete change for Aboriginal people

The Victorian Government is currently developing an Anti-Racism Strategy. It is essential that this strategy takes a comprehensive approach to Anti-Racism, which includes measures to better understand and respond to systemic racism.

The strategy must lead to concrete outcomes for Aboriginal people, and the Government must be accountable to Aboriginal communities in implementing this Strategy.

### 5. Cultural awareness, anti-racism and unconscious bias training

Although training is not a cure-all, mandatory cultural awareness, anti-racism and unconscious bias training for all public authorities in Victoria is an important mechanism for increasing awareness of systemic racism and its impacts for Aboriginal communities. Ideally, training should be mandatory for all individuals engaged in developing and implementing public policies and legislation. As a priority, anti-racism training must be prioritised for public agencies/organisations where racism is known to be widespread, including for example, Victoria Police and staff in all custodial facilities.

## Where can I learn more about systemic racism?

You can learn more about systemic racism and its impacts for Aboriginal communities in the following VALS documents:

- [Submission to the Parliamentary Inquiry on Victoria's Criminal Justice System](#)
- [Submission on the Anti-Racism Strategy](#)
- [Policy Briefing on Police Oversight and Accountability](#)
- [Community Factsheet: the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment \(OPCAT\)](#)
- [Community Factsheet: the Age Pension test case](#)
- [Resource: Investigating systemic racism, a Tanya Day inquest resource for advocates and lawyers \(produced together with the Victorian Equal Opportunity and Human Rights Commission\)](#)